

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.42 OF 2004

Narshi Poona Jadhav & Ors.....Petitioner

Vs.

The State of Maharashtra & Ors..Respondents

Mr.R.D.Soni with Mr. Bipin Joshi, for the Petitioners

Mr. R.M. Sawant, Govt. Pleader for Respondent NO.1.

Mr. Vinod Mahadik, for Respondent NO.2.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.

DATE : 4TH MAY, 2005

P.C.:

1. Rule. Heard forthwith.

2. It is the case of the petitioners that the order of the Appellate Authority dismissing their appeal in respect of F.P. No.750 and 750A discloses that the issue has not at all been addressed to. The original Plot was identified as Plot No.120D. The said plot was reconstituted as F.P. No.750A, 751, 752 and 754 of the sanctioned TPS No.IV Mahim first variation final. The case of the petitioners is that in respect of their right on F.P.754. Petitioners have been given two flats in the building constructed therein which is known as Mira-Mar Co-operative Housing Society. It is their further case that they have structure on Final Plot NO.750A and in so far as that Plot is concerned no relief has been given. The Agreement by which the flats were given which was entered into between them and the builder and it is pointed out pertained only to Final Plot No.754 and it had nothing to do with the new Plot No.750A.

. After considering the contentions of the parties which had also been raised before the Appellate Authority we do not find that this issue has been answered by the Appellate

Authority though it may be set out that the Appellate Authority in second part of para.B has observed that the structure should also be removed. If the Appellate Authority had come to a conclusion, then a finding ought to have been recorded based on the document that the two flats had been allotted to the petitioners in view of their right over on F.P. No.754 and F.P. No.750A. We do not find such a finding has been recorded.

. In the light of that the impugned order dated 6th November, 2003 is set aside. The matter is remanded back to the Appellate Authority. The respondent NoO.1 to decide the matter afresh in view of what has been recorded in this judgment. The parties to appear before the Appellate Authority on 27th June, 2005 at 11.00 a.m. The Appellate Authority thereafter after hearing the parties to dispose of the same not later than four months after the first appearance. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)

(S.P. KUKDAY, J.)